

ROBERT ALAMEDA ET AL.

IBLA 80-440

Decided June 9, 1980

Appeal from letter-decision of the Oregon State office, Bureau of Land Management, refusing to record assessment statements for the Lucky Strike No. 1; Babe Ruth No. 1, 2, and 3; Chief Joseph; Ann; White Horse; Rusty Pan; and Lucille mining claims, and declaring the claims void. WA MC-383 (952).

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

2. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: Robert Alameda, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Robert Alameda, hereinafter appellant, appeals from a letter-decision dated January 28, 1980, by the Oregon State Office, Bureau of Land Management (BLM), which refused to record appellant's mining claim filing because he failed to submit certificates of location of the claims or certain other proof of locations on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the implementing regulation, 43 CFR 3833.1-2(a). The decision also ruled that under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a), the failure to file the notices of location timely with BLM is deemed conclusively to constitute an abandonment of the claims and, therefore, the claims are void.

Appellant states on appeal to this Board that he and other appellants had owned and done work on the subject claims for over 50 years. The pertinent regulation, 43 CFR 3833.1-2(a), provides in relevant part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

In the event a mining claimant fails to comply with the recordation requirements, the regulations further provide:

§ 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void. [Emphasis supplied.]

The regulations simply echo the statutory requirements.

[1] Appellant's claims were not accompanied by claim filings and no record evidence could be found which indicated that appellant had previously filed for recordation with the proper BLM office. We can

only conclude, therefore, that the documents were not submitted, as required by FLPMA and the regulations, supra. The statutory and regulatory mining recordation requirements are mandatory and failure to comply therewith must result in a finding that the claim is void. John Walter Chaney, 46 IBLA 229 (1980), Walter T. Paul, 43 IBLA 119 (1979), Dale C. Delor, 40 IBLA 88 (1979). Appellant's submission to BLM of his proof of assessment work (proof of labor) and filing fees did not satisfy filing requirements.

[2] Appellant finally asserts that he had for many years filed with the county government in which the mining claims were located and that he was unaware that this method of filing had become "defective." The filing in the local governmental offices are still required. The Federal Land Policy Management Act added new requirements, including the filing requirements with BLM. All persons dealing with the Government are presumed to have knowledge of statutes and duly promulgated rules and regulations regardless of their actual knowledge of what is contained in the laws and regulations. Phyllis Wood, 46 IBLA 309 (1980); Bernard B. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghedarducci, 41 IBLA 277 (1979).

Because the requirements of the statute and regulations were not met here, the claims must be deemed conclusively to have been abandoned and void. Appellant may, however, relocate his claims, if for locatable minerals, and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to mineral location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

